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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,268	03/16/2001	Jean-Louis H. Gueret	5725.0869-02	5334
22852 7590 05/04/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 05/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/809,268

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-222 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-32 and 39-42 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 60,61,6370,106,107,109,116,152,153,155,162,204 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Continuation of Disposition of Claims: Claims rejected are 23-28,33-38,43-59,62,64-69,71-105,108,110-115,117-151,154,156-161,163-203 and 205-222.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-28, 33-38, 43-59, 62, 64, 68, 69, 71, 75-105, 108, 110, 115, 117, 121-151, 154, 156, 160, 161, 163-203, 205-222 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedford (4,887,994).

Bedford disclose a layered product applicator comprising an application portion (23) comprising a first flexible support (13,36) the application portion being configured to apply a cosmetic product; as et forth in column 3, lines 25-35; and a flexible elongated gripping portion or handle (15) comprising a second end of the flexible support (13,36) and at least one layer of a flexible material (15) covering the second end of the flexible support, the flexible layer (15) of the material of the at least one layer being greater than the flexibility of the support, the flexible material being impervious to the cosmetic product; wherein the flexible support comprises a cardboard, ass et forth in column 2, lines 9-10, the flexibility of the material of the at least one layer being greater than the flexibility of the support, (plastic, paper or wood for the support, and foam for the layer material, respectively), the flexible support comprises a material chosen from cardboard (hard paper) the at least one application portion and the gripping portion being asymmetrical with respect to one another, as best seen in FIG.3, the top portion of (15) is asymmetrical with the bottom portion of (23), the spongy flexible material is

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impregnated with at least one active cosmetic agent, anti-bacterial agent, the flexible material and the layer of the second spongy flexible material are on a same surface of the flexible support and oppositely-facing surface of the flexible surface; as set forth in column 1, lines 60-68, column 2, lines 1-5, lines 64-68, and as best seen in FIG.3, a container (41,43) containing a cosmetic product, the cosmetic product applicator, the gripping portion the entire cosmetic product applicator, a receptacle, a lid pivotally mounted to the receptacle; as best seen in FIGS.5,6; first and second planar surfaces (36) being parallel to one another, the material is chosen from polyurethane, column 2, lines 8-9, column 3, lines 1-45.

With respect to the method claims, the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 65-67,72-74,111-113,118-120, 157-159 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedford (4,887,994).

It is noted that Bedford discloses all the limitations; except for the different shapes and sizes of the gripping portion, and the different shapes and sizes of the flexible support and the length of the flexible material, as claimed by applicant.

However, it would have been a matter of design choice to change the size and shape of

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the flexible support and flexible material, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). As to the shape of the gripping portion and the flexible support, these particular configurations are nothing more than one of numerous configuration one of ordinary skill in the art would have found obvious for the purpose of providing application surfaces in the flexible support and flexible material. In re Dailey, 149 USPQ 47 (CCPA 1976).

Allowable Subject Matter

Claims 29-32,39-42 are allowed.

Claims 60,61,6370,106,107,109,116,152,153,155,162,204 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,176,754	1-1993	Hirzel
2,653,598	9-1953	Torino

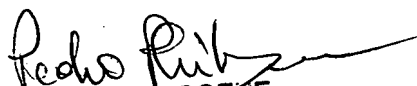
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
April 26, 2007


PEDRO PHILOGENE
SENIOR EXAMINER